

Competition News Alert

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Competition Commission of India amends Combination Regulations

The Competition Commission of India ('CCI') vide a Notification (published in the Gazette of India) on February 23, 2012, published the "**The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2012**", amending the existing Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("Combination Regulations"). After gaining experience in the implementation of the Combination Regulations for almost eight months, CCI has amended the Combination Regulations with a view to provide further relief to the corporate world from making filings for combinations which are unlikely to raise adverse competition concerns, reduce their compliance requirements, make filings simpler and moves towards more clarity and certainty in the application of the Competition Act, 2002 (the Act) and the Combination Regulations.

The highlights of the major changes made by the present amendments in the Combination Regulations are as under:

1. **Aligning with SEBI Takeover Code:** The Regulations now do not require a notice to be filed for acquisitions that are less than 25% of the shares or voting rights of a company on cumulative basis, as compared to the earlier position of only 15% of the shares or voting rights on a cumulative basis. The change is in sync with SEBI New Takeover Code, which raised the open offer trigger from 15 to 25 % of the shares acquired. **[Schedule I, Category 1].**



2. **Intra-Group Transactions Exempted:** To reduce the compliance burden to the companies that are looking for intra-group restructuring, CCI has included it in the sub-regulation 8A. The Regulations have now dispensed with the requirement of filing a notice in respect of intra-group mergers or amalgamations involving enterprises wholly owned by the group companies. **[Schedule I, Category 8A]**
3. **Expensive filing fee:** Considering the resources deployed in the assessment of the notice, and keeping in view the fees charged by other regulatory authorities in India and abroad, it has been decided to bring the filing fees to a more realistic level, by increasing the fee from INR 50,000 to INR 10,00,000 in respect of Form I and from INR 10,00,000 to INR 40,00,000 in respect of Form II. It is expected that the number of filings will be reduced substantially after the amendments that have removed the requirement for companies to file a notice in several instances that are not likely to adversely affect competition. **[Regulation 11]**
4. The acquisitions of shares or voting rights pursuant to a bonus issue or stock splits or buy backs and acquisition of shares or voting rights pursuant to subscription of rights issue (without the restriction of their 'entitled proportion'), not leading to acquisition of control, are now included in the list of transactions in Schedule I, that normally would not require a filing with the Commission. **[Schedule I, Category 6]**
5. The Company Secretary of the company, duly authorised by the Board, has been authorised to sign

the Form I or Form II, in addition to those persons specified under clause (c) of sub-regulation (1) of regulation 11 of the Competition Commission of India (General) Regulations, 2009 (i.e. the Managing Director or the Director authorized by the Board).

[Regulation 9, sub-regulation (1) and (3) proviso]

6. In order to provide certainty about transactions involving asset transfers (slum sale) and calculation of value of assets and turnover for the purposes of Section 5 of the Act, a new provision has been introduced for inclusion of the value of assets and turnover of a transferor company to the transferee company where assets are transferred to the transferee company for the purpose of effecting a combination. **[Regulation 5, sub-regulation 9]**
7. Since Form III has to be filed within a relatively short time period of seven days, a provision has been made for admission of belated filing of Form III in respect of transactions covered under Section 6(5) of the Act. Further, Form III would now be filed along with a copy of the loan or investment agreement. **[Regulation 6]**
8. In Form I, the distinction for filling up Part I for certain types of transactions and Part II for the remaining

transactions has been removed, leading to clarity and uniformity. To make it more relevant, Form I has been amended and a provision has been introduced for parties to provide details of value of the assets and turnovers for the purpose of Section 5 and to provide a copy of the agreement, board resolution etc. as mentioned in Section 6(2). Form I remains the default form, wherein some simplifications have been introduced. Parties retain the option of filing Form II, especially in those cases where there may be significant horizontal overlap (> 15%) and/or significant vertical relationship (> 25%) between the parties.

[Regulation 5, sub-regulation (2) and (3)]

9. In order to facilitate a quick and efficient review of the notice, the parties are required to file a brief summary of the combination, in not less than 2000 words, when filing the notice. **[Regulation 13, sub-regulation 1A]**

For any further queries or assistance, please contact or write to:

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